



# ? PLANNING WORK NEAR the WATER ?

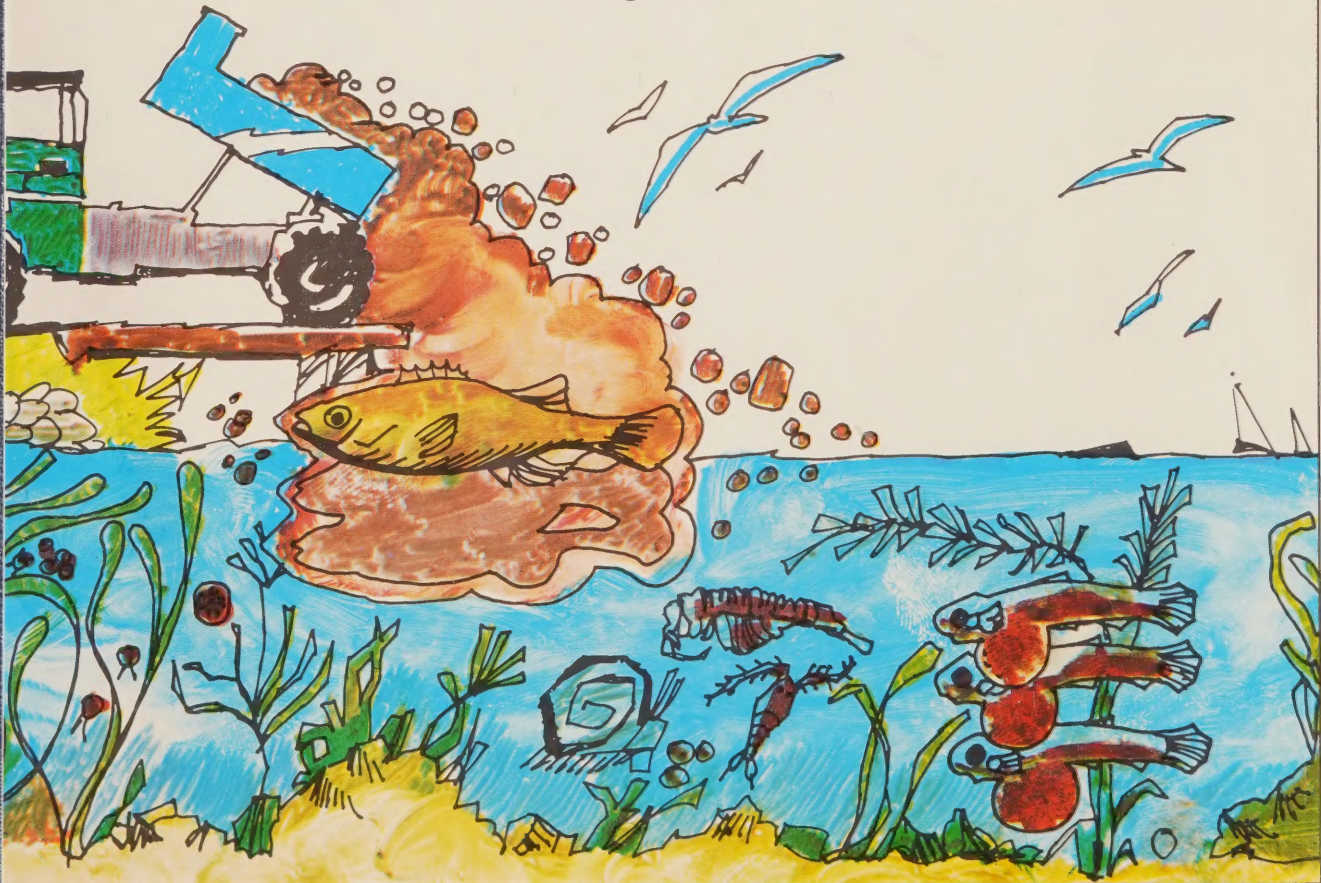
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**Better check Canada's revised Fisheries Habitat Protection laws first  
— and avoid trouble later.**

Canada's laws have recently been revised to give greater protection to the sensitive areas on which fish depend for growth and life — coastal waters, salt marshes, streams, riverbeds, lake shores and the like.

Anyone buying property or planning any project that might have some impact on these areas, should find out exactly how these new laws could affect construction plans. This leaflet highlights the changes in the legislation.









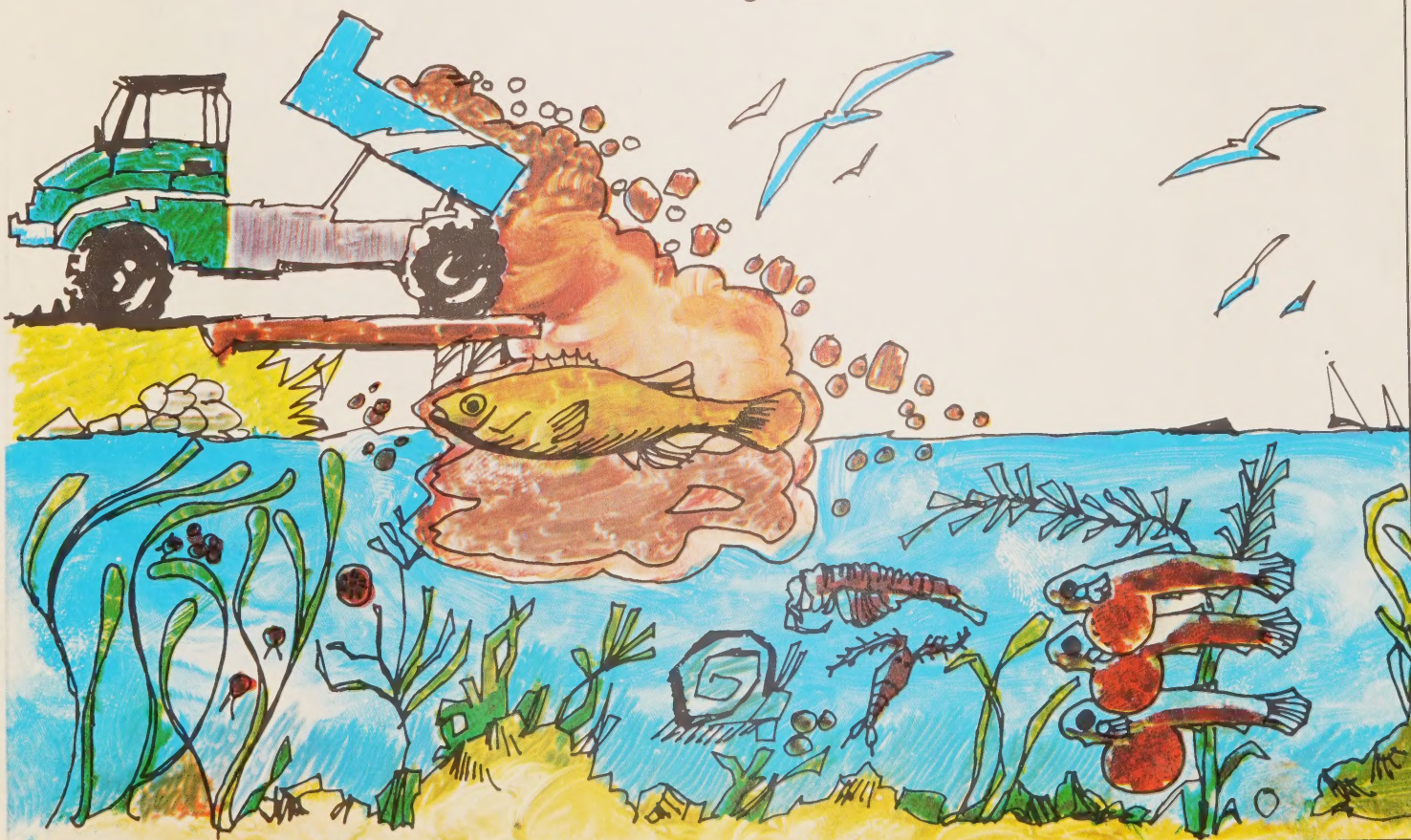
# ? PLANNING WORK NEAR the WATER ?

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## What's a "Fish Habitat"?

Among the amendments which Parliament has made to the Fisheries Act of Canada are those in Section 31 and parts of Section 33 which are designed to protect what the Act describes as **"fish habitats"**. The term covers a great variety of places where fish live. Fish habitats are defined as

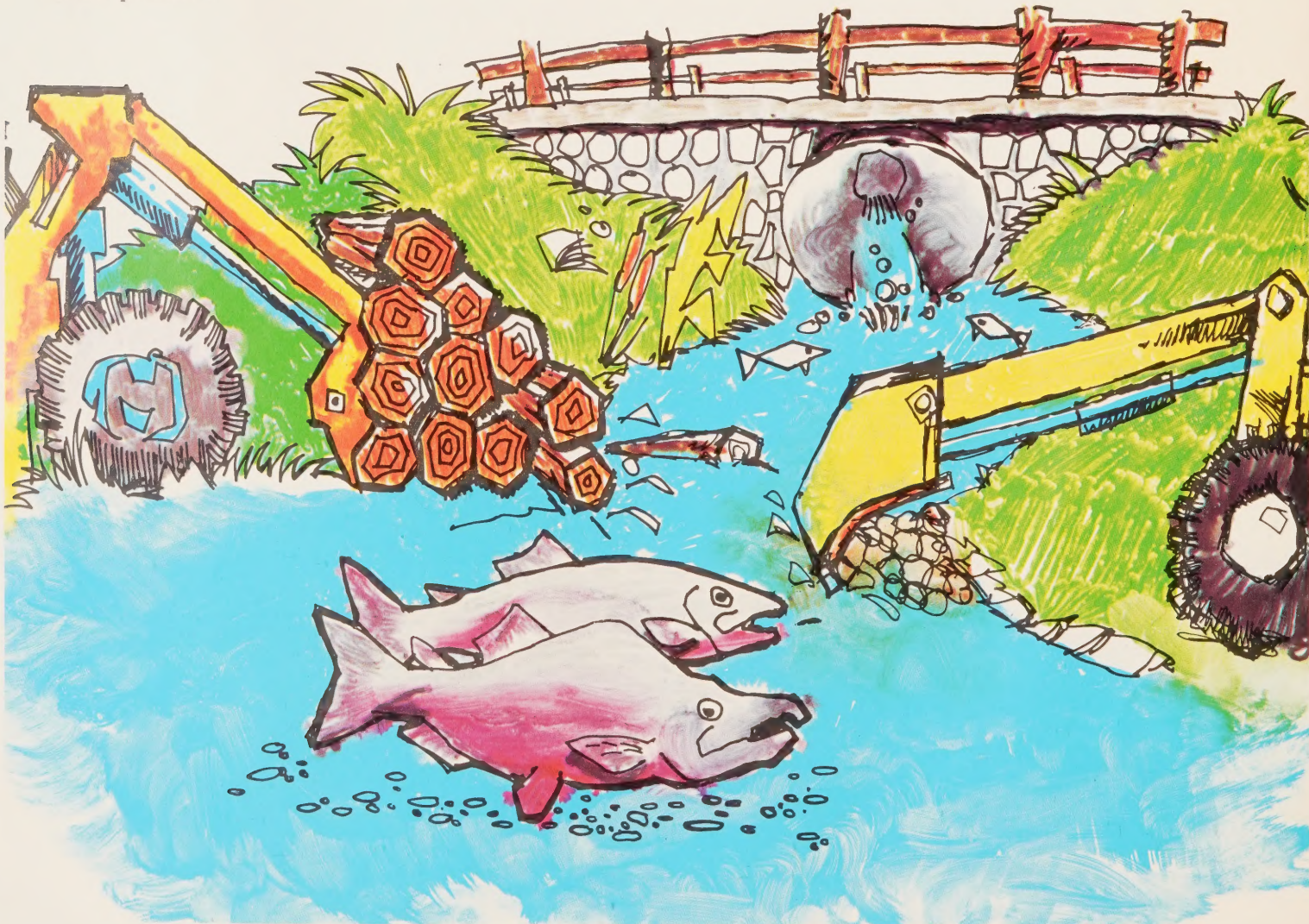
**"spawning grounds and nursery, rearing, food supply and migration areas on which fish depend, directly or indirectly, in order to carry out their life processes."**

In other words, the habitats include not only the water in rivers, lakes, streams and oceans but the total surroundings in which plants and other life forms interact to make fish life possible.

## Money in the bank

One problem up to now has been that most people do not automatically recognize the value of fish habitats. It is easy to enlist public support to protect a majestic river valley or a favorite swimming beach. But an ordinary marsh or a smelly tidal flat is far more likely to be dredged, paved over or otherwise destroyed as a fish habitat without the public realizing that something of great economic and social value has been lost. And yet fish habitats are vital assets to Canadians — in fact, money in the bank. They are essential to the survival of fish and represent the bedrock of our commercial and recreational fisheries. They are as essential to those industries as topsoil is to farming.

Another problem is that a fish habitat can be wiped out without much visible evidence. For example, the eggs of salmon and trout cannot survive just anywhere — they must be laid in streams where there is a bed of gravel. Take away the gravel and the stream will flow as before on the surface, but it will not be a spawning stream. Some fish, and the food organisms on which they depend, need fast-running water to survive, and if the water is dammed they may be lost. Land filling and paving over marshes can cut off the flow of nutrients and food which fish need for growth.





## What harms habitats?

Fish habitats can be damaged in ways both obvious and subtle and by changes big and small. A multi-million dollar hydro project can take its toll, but so can a poorly-installed culvert on a farm lane crossing a salmon or trout stream if it blocks fish migration.

Among the most common threats posed to fish habitats are those associated with:

- removal of sand or gravel from beaches, riverbanks or stream beds
- diverting streams
- dredging or filling of tidal flats or marsh land
- deep sea port construction
- development of offshore oil and gas reserves
- seabed mining

- land clearing and some types of road construction
- construction of power installations
- dyking and stream channelization
- building of causeways, wharves, marinas and reservoirs
- logging and log storage
- pipeline construction

These projects and many others may do irreparable damage and can cause social and economic losses to fisheries if not carefully planned. So may any project that upsets the physical, chemical and biological balance of fish habitats.

### Check before starting

These new laws do not mean that Fisheries management people will be blocking every project affecting fish habitats. It does mean however, that the project's impact on fisheries will have to be considered. The Minister responsible for the Fisheries Act can now require a developer to

submit complete information, including plans, specifications, studies and samples, for scrutiny by Fisheries management authorities. If this shows a possible danger to a fish habitat, the Minister can order that the plans be changed.

Failure to comply with the law may result in fines of up to \$50,000, or up to two years imprisonment on conviction after indictment.

In most cases early consultation between the developer and the government officials responsible for fish habitat management will make it possible to devise a plan that meets the needs of all concerned. Fish habitat experts can provide advice and assistance that may well improve the project for the developer while even enhancing the fisheries resource base.





For further information about fish habitat protection requirements contact the fisheries authorities listed below:

**Federal fisheries contacts:**

**NEWFOUNDLAND REGION**

Section Head,  
Habitat Management,  
Research & Resource Services,  
Fisheries & Marine Service,  
P.O. Box 5667,  
St. John's, Newfoundland.  
A1C 5X1

Telephone: (709) 737-4409  
or (709) 737-4485

**MARITIMES REGION** — (Nova  
Scotia, New Brunswick, Prince  
Edward Island)

Manager,  
Fisheries Environmental Co-  
ordination, Resource Branch,  
Fisheries and Marine Service,  
P.O. Box 550,  
Halifax, Nova Scotia.  
B3J 2S7

Telephone: (902) 426-3929

**NORTHWEST TERRITORIES**

District Manager,  
Fisheries & Marine Service,  
P.O. Box 2310,  
Yellowknife, N.W.T.  
X1A 2P7

Telephone: (403) 873-5831

**PACIFIC REGION** — (British  
Columbia)

Chief, Habitat Protection,  
Fisheries & Marine Service,  
1090 West Pender Street,  
Vancouver, British Columbia  
V6E 2N9

Telephone: (604) 666-3282

**YUKON**

District Supervisor, Fisheries &  
Marine Service,  
122 Industrial Road,  
Whitehorse, Yukon,  
Y1A 2T9

Telephone: (403) 667-2235

**OTTAWA**

Director,  
Aquatic Environment Branch,  
Resource Services Directorate,  
Fisheries & Marine Service,  
Ottawa, Ontario.  
K1A 0E6

Telephone: (613) 995-1818

**Provincial fisheries contacts:**

In Alberta, Saskatchewan, Manitoba,  
Ontario and Quebec, where the federal  
Fisheries Act is administered by the  
provincial government, contact the ap-  
propriate provincial fisheries manage-  
ment agency.

In British Columbia, in areas which  
support purely freshwater fish species,  
contact the provincial Department of  
Recreation and Conservation.



Produced by:

**Information Branch  
Fisheries and Marine Service  
Fisheries and Environment Canada  
Ottawa, Ontario K1A 0E6**



# What the FISHERIES ACT says about fish habitat

## Protection of fish habitat

**31.** (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

(2) No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

## Penalties for habitat destruction

**31.** (3) Every person who contravenes subsection (1) is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years.

(4) Subsections 33(6) to (9) apply in respect of an offence under this section as if it were an offence under section 33.

## Definition - fish habitat

**31.** (5) For the purposes of this section and sections 33, 33.1 and 33.2, "fish habitat" means spawning grounds and nursery rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

## Offences

**33.** (6) Where an offence under subsection (5) is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

(7) Where a person is convicted of an offence under this section, the court may, in addition to any punishment it may

impose, order that person to refrain from committing any further such offence or to cease to carry on any activity specified in the order the carrying on of which, in the opinion of the court, will or is likely to result in the committing of any further such offence, or to take such action specified in the order as, in the opinion of the court, will or is likely to prevent the commission of any further such offence.

(8) In a prosecution for an offence under this section or section 33.4, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

## Injunctions

**33.** (9) Notwithstanding that a prosecution has been instituted in respect of an offence under this section, the Attorney General of Canada may commence and maintain proceedings to enjoin any violation of any provision of this section.

## Requirement to supply plans, etc.

**33.1** (1) Every person who carries on or proposes to carry on any work or undertaking that results or is likely to result in

(a) the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any such water, or

(b) the alteration, disruption or destruction of fish habitat,

shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph (3)(a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses,

samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

(c) whether there is or is likely to be a deposit of a deleterious substance by reason of such work or undertaking that constitutes or would constitute an offence under section 33 and what measures, if any, would prevent such a deposit or mitigate the effects thereof; or

(d) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under section 31 and what measures, if any, would prevent such a result or mitigate the effects thereof.

## Powers of minister

**33.1** (2) If, after reviewing any material or information provided under subsection (1) and affording the persons who provided it a reasonable opportunity to make representations, the Minister or a person designated by the Minister is of the opinion that an offence under section 31 or 33 is being or is likely to be committed, the Minister or a person designated by the Minister may, by order, subject to regulations made pursuant to paragraph (3)(b), or, if there are no such regulations in force, with the approval of the Governor in Council,

(a) require such modifications or additions to the work or undertaking or such modifications to any plans, specifications, procedures or schedules relating thereto as the Minister or a person designated by the Minister considers necessary in the circumstances, or  
(b) restrict the operation of the work or undertaking,

and, with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.



## Regulations & Consultation

**33.1 (3)** The Governor in Council may make regulations

(a) prescribing the manner and circumstances in which any information or material shall be provided to the Minister without request under subsection (1); and

(b) prescribing the manner and circumstances in which the Minister or a person designated by the Minister may make orders under subsection (2) and the terms of such orders.

(4) Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection (2), he shall offer to consult with

(a) the governments of any provinces that he considers to be interested in any such proposed order, and

(b) any departments or agencies of the Government of Canada that he considers appropriate,

but nothing in this subsection prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection (2) without such consultation where he considers that immediate action is necessary.

## Failure to comply

**33.4 (1)** Every person who

(a) fails to provide the Minister with any material or information requested pursuant to subsection 33.1(1) within a reasonable time after the request is made,

(b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 33.1(1),

(c) fails to make a report that he is required to make under subsection 33.2(4),

(d) carries on any work or undertaking described in subsection 33.1(1)

(i) otherwise than in accordance with any material or information relating to the work or undertaking that he provides to the Minister under subsection 33.1(1),

(ii) otherwise than in accordance with any such material or information as required to be modified by any order of the Minister under paragraph 33.1(2)

(a), or

(iii) contrary to any order made by the Minister under subsection 33.1(2),

(e) fails to take any reasonable measures that he is required to take under subsection 33.2(5) or fails to take such measures in the required manner,

(f) fails to comply with a direction of an inspector under subsection 33.2(6), or any part of such direction, that is not void under subsection 33.2(7), or

(g) contravenes section 33.3, is guilty of an offence and

## Penalties for failure to comply

(h) in any case referred to in paragraph (a), (b) or (c), is liable on summary conviction to a fine not exceeding five thousand dollars for a first offence, and not exceeding ten thousand dollars for each subsequent offence, or

(i) in any case referred to in paragraph (d), (e), (f) or (g), is liable on summary conviction to a fine not exceeding twenty-five thousand dollars for a first offence, and not exceeding fifty thousand dollars for each subsequent offence.

(2) Subsections 33(6), (7) and (9) apply in respect of an offence under subsection (1) as if it were an offence under section 33.

**The above are extracts only.**

**Further information on the Act is available from the fisheries offices listed below.**

### Federal fisheries contacts:

#### NEWFOUNDLAND REGION

Section Head,  
Habitat Management,  
Research and Resource Services,  
Fisheries and Marine Service,  
P.O. Box 5667,  
St. John's Newfoundland.  
A1C 5X1

Telephone: (709) 737-4485  
or (709) 737-4409

#### MARITIMES REGION — (Nova Scotia, New Brunswick, Prince Edward Island)

Manager,  
Fisheries Environmental Co-ordination,  
Resource Branch,  
Fisheries and Marine Service,  
P.O. Box 550,  
Halifax, Nova Scotia.  
B3J 2S7

Telephone: (902) 426-3929

#### PACIFIC REGION — (British Columbia)

Chief, Habitat Protection,  
Fisheries and Marine Service,  
1090 West Pender Street,  
Vancouver, British Columbia.  
V6E 2N9

Telephone: (604) 666-3282

#### YUKON

District Supervisor,  
Fisheries and Marine Service,  
122 Industrial Road,  
Whitehorse, Yukon.  
Y1A 2T9

Telephone: (403) 667-2235

#### NORTHWEST TERRITORIES

District Manager,  
Fisheries and Marine Service,  
P.O. Box 2310,  
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#### OTTAWA

Director,  
Aquatic Environment Branch,  
Resource Services Directorate,  
Fisheries and Marine Service,  
Ottawa, Ontario.  
K1A 0E6

Telephone: (613) 995-1818

### Provincial fisheries contacts:

In Alberta, Saskatchewan, Manitoba, Ontario and Quebec, where the federal Fisheries Act is administered by the provincial government, contact the appropriate provincial fisheries management agency.

In British Columbia, in areas which support purely freshwater fish species, contact the provincial Department of Recreation and Conservation.









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